

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : Docket#  
 : 08-cr-906 (KAM) (JO)  
 :  
- versus - : U.S. Courthouse  
 : Brooklyn, New York  
SYLLA, et al., :  
 : October 15, 2010  
Defendant :  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR FATICO HEARING  
BEFORE THE HONORABLE KIYO A. MATSUMOTO  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: **Loretta E. Lynch, Esq.**  
United States Attorney

BY: **Patrick Sinclair, Esq.**  
Assistant U.S. Attorney  
271 Cadman Plaza East  
Brooklyn, New York 11201

For Defendant Sylla: **Zachary Margulis-Ohnuma, Esq**  
Law Office of  
Zachary Margulis-Ohnuma  
260 Madison Avenue  
18th Floor  
New York, NY 10016

For Defendant Doumbouya: **Michael O. Hueston, Esq.**  
Michael Hueston,  
Attorney at Law  
350 Fifth Avenue  
Suite 4810  
New York, NY 10118

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**APPEARANCES CONTINUED:**

**For Defendant Drissa Diane:**

**Steven Z. Legon, Esq.**  
Steven Zachary Legon,  
Attorney At Law  
20 Vesey Street  
Suite 400  
New York, NY 10007

**Official Transcriber:**

**Rosalie Lombardi**  
**L.F.**

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1                 THE CLERK: This is Criminal Cause for a Fatico  
2 hearing, 08-CR-906, United States v. Kemo Sylla, Mamadi  
3 Doumbouya and Drissa Diane.

4                 Will counsel please state their appearances?

5                 MR. SINCLAIR: On behalf of the United States,  
6 Patrick Sinclair, joining me at counsel table is Special  
7 Agent Phil Alegranti from the Fish and Wildlife Service.

8                 Good morning, your Honor.

9                 MR. MARGULIS-OHNUMA: For the defendant Kemo  
10 Sylla, Zachary Margulis-Ohnuma. I'm at 260 Madison  
11 Avenue. I'm joined at counsel by Bradley Miller, a  
12 paralegal from my office.

13                 Good morning, your Honor.

14                 MR. HUESTON: Good morning, your Honor.  
15 Michael Hueston for Mamadi Doumbouya.

16                 THE COURT: Good morning.

17                 MR. LEGON: Good morning, your Honor. For the  
18 office of attorney Anthony Ricco, Steven Legon on behalf  
19 of Drissa Diane.

20                 THE COURT: All right. thank you. Good  
21 morning. And we have two interpreters here for the  
22 record. Ma'am, your name?

23                 THE INTERPRETER: Debra Diarme (ph.).

24                 THE COURT: Good morning, Ms. Diarme.  
25 (INTERPRETER SWORN)

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1           THE COURT: And your language is?

2           THE INTERPRETER: Mandingo.

3           THE COURT: Thank you, ma'am. And we have  
4 another interpreter, sir.

5           THE INTERPRETER: Good morning. Pa Drammeh.

6           THE COURT: Okay, thank you, Mr. Drammeh.

7 (INTERPRETER SWORN)

8           THE COURT: Thank you. And your language, sir?

9           THE INTERPRETER: Mandingo.

10          THE COURT: Thank you. All right. Mr.  
11 Margulis-Ohnuma, I would be happy to hear from you.

12          MR. MARGULIS-OHNUMA: Thank you, your Honor. I  
13 sent a letter via ECF to the government in this regard  
14 yesterday. On Wednesday, your Honor received testimony  
15 alleging that my client had lived in Ivory Coast. It's  
16 our position that that's untrue and should have been  
17 reflected in discovery that was turned over more than a  
18 year ago that would reveal the immigration records that  
19 the agent discussed that he was relying on for this  
20 assertion.

21          The government's left an impression that  
22 Mr. Sylla's involved in a number of ivory transactions  
23 that originated in the Ivory Coast. It's therefore --  
24 and again, it's impressionistic but it's therefore  
25 relevant. They've left -- they've, I think sought to

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1 leave whether explicitly or implicitly, to ask the Court  
2 to draw an inference because he lived in Ivory Coast, he  
3 has connections in Ivory Coast, all of the ivory comes  
4 from Ivory Coast, that's evidence that he was involved in  
5 a large number of ivory transactions would we contend he  
6 was not involved in.

7           It's our position that the testimony is false  
8 and that the records that were relied on should have been  
9 turned over already. I reviewed during the break  
10 yesterday the discovery in full. I found his passport  
11 which goes back just to 2004.

12           But we haven't received the A file or any other  
13 records that would indicate where he lives. So I have no  
14 way to contradict this sworn testimony of an officer on a  
15 highly relevant matter. I've asked the government to  
16 turn over the records and they've essentially ignored the  
17 request.

18           So I am asking you to order them to turn over  
19 the records on the basis of that assertion which is now  
20 both in the complaint and in the sworn testimony  
21 yesterday.

22           THE COURT: Mr. Sinclair?

23           MR. SINCLAIR: Your Honor, I think Mr.  
24 Margulis-Ohnuma mischaracterizes the issue. The  
25 affidavit that was sworn to by the agent indicates that

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1 the source of the information in the affidavit which  
2 contains the statement that Kemo Sylla resided in the  
3 Ivory Coast, was based in part on his own observations  
4 and part on his review of the record and in part on his  
5 conversation with other law enforcement agents which  
6 would have included ICE agents who were part of this  
7 joint investigation.

8           In the course of yesterday, we did seek out the  
9 source of this information from ICE. Unfortunately, the  
10 case agent who was assigned to the case from ICE has  
11 subsequently in the interim retired from ICE. So we're  
12 unable to reach out to him. We did, however, speak with  
13 a subsequent agent who is responsible for the case now  
14 and he was unable to identify where the source of this  
15 information might have been.

16           So that's sort of what the record is. There's  
17 another part of the request which was to receive the  
18 original passport. The original passport has been turned  
19 over to ICE which in turn turned it over to the Detention  
20 and Removal Section of the Department of Homeland  
21 Security in anticipation of deportation proceedings  
22 against Mr. Sylla upon the completion of these  
23 proceedings. And I believe that the passport is  
24 currently located in Garden City. We've a request for it  
25 to be brought to Brooklyn, as soon as possible and to the

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1 extent that it's still needed, we'll make it available  
2 for inspection to the defense. But that's all that we  
3 have been able to do.

4 To the extent there's a request for the A file  
5 and the Court has addressed that in this case and there's  
6 no basis to turn over the immigration file here, so the  
7 government declines to turn over the immigration file.  
8 And we declined to turn over the immigration file  
9 previously in this case and I don't recall if it was  
10 your Honor or the magistrate judge at the time, who was  
11 dealing with the detention proceeding but our decision  
12 was essentially endorsed by the Court, that it's not  
13 within the law for the government to have to turn over  
14 the A file in this type of proceeding.

15 MR. MARGULIS-OHNUMA: Your Honor, can I just  
16 respond to this very quickly.

17 THE COURT: Yes.

18 MR. MARGULIS-OHNUMA: There was a decision on  
19 the A file but that was not based on the government's  
20 relying on those documents for an assertion tying  
21 Mr. Sylla to particular transactions. If they were going  
22 to rely on them, I should be able to see the evidence.

23 And frankly, I'm pushing this point because it  
24 is my belief and the position of my client that it's  
25 simply false testimony. There's no document that can

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1 link him to the Ivory Coast because he never lived there.  
2 And I want the Court to understand that.

3 MR. SINCLAIR: And, your Honor, we don't --

4 MR. MARGULIS-OHNUMA: And I want an opportunity  
5 to prove that.

6 MR. SINCLAIR: We don't decline -- we don't  
7 deny that there's no documents that we've been able to  
8 identify that links the defendant to the Ivory Coast.  
9 Rather, the basis of Agent Alagrante's statement in his  
10 complaint as stated in the complaint, and on the stand --  
11 and stated on the stand and in the complaint, was based  
12 on his conversations with Don Swiatoka (ph.), who was  
13 then the agent assigned to the case from ICE. We've been  
14 unable to identify Agent Swiatoka and as I've represented  
15 to the Court, we've also been unable to identify any  
16 document or record that indicates that Mr. Sylla lived in  
17 the Ivory Coast.

18 MR. MARGULIS-OHNUMA: Your Honor, he swore  
19 under oath that he looked at records with Don Swiatoka.  
20 It was not an oral representation. They looked at  
21 records together is what they said. He refuses to turn  
22 over those records.

23 MR. SINCLAIR: Your Honor, he's  
24 mischaracterizing the evidence. We can look at the  
25 record. What the agent's testimony was is that in the

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1 course of preparing the complaint when they were putting  
2 it together, the paragraphs that relate to each and every  
3 one of the defendants, you know, immigration status and  
4 their national origin and what not, they did look at A  
5 files, that is correct and accurate, and the agent will  
6 get on the stand and testify to that.

7           With respect to this particular sentence that  
8 he resided in the Ivory Coast, it was not in those  
9 records and the agent believes it was based on  
10 conversations with Agent Swiatoka. It's -- which is  
11 consistent with what he testified to and this is all a  
12 tempest in the teapot at the end of the day because we're  
13 in a Fatico hearing to determine the market value of  
14 ivory.

15           So the government concedes that there's no  
16 record or document that links him to the Ivory Coast and  
17 to the extent that there was a miscommunication in those  
18 conversations with Agent Swiatoka, maybe that's what  
19 happened, maybe that's not what happened, we can't say  
20 now two or three years later but at the end of the day,  
21 the government tells the Court that there was no document  
22 or record that we've been able to identify that links him  
23 to the Ivory Coast for a period residing there.

24           THE COURT: Well I can take note of that, that  
25 the government has made this concession and with respect

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1 to any testimony on that point, I certainly will be  
2 reviewing the transcript and you know, give that  
3 testimony whatever weight I think it deserves.

4 MR. MARGULIS-OHNUMA: Okay. Thank you,  
5 your Honor.

6 THE COURT: They've made a concession. They  
7 have nothing to give you. If they had it, I would order  
8 it.

9 MR. MARGULIS-OHNUMA: Okay.

10 THE COURT: Okay?

11 MR. MARGULIS-OHNUMA: Thank you, Judge.

12 THE COURT: Thank you.

13 MR. SINCLAIR: I have one brief legal matter  
14 that I hope it's a brief legal matter. At the end of the  
15 proceedings last time, I think I represented to the Court  
16 that there was a body of Second Circuit case law which  
17 would disallow the Court from considering the affidavit  
18 of the defendant in connection with the Fatico hearings.  
19 That's inaccurate. I apologize to the Court. I was  
20 considering the body of case law that relates to  
21 evidentiary hearings for suppression motions and it is  
22 permissible. The Court has full discretion to consider  
23 anything and everything that it wishes to consider in the  
24 course of these Fatico proceedings. So to the extent  
25 that I misrepresented the state of the law, I apologize

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1 to the Court.

2 THE COURT: All right. Thank you for that  
3 clarification. I was -- I will consider Mr. Sylla's  
4 affidavit, if you wish me to do so.

5 MR. MARGULIS-OHNUMA: Thank you, your Honor.

6 THE COURT: Okay. Now one other matter, I  
7 think we had some exhibits. I just wasn't sure if we had  
8 done this in the proceedings, Government Exhibits, I  
9 think it was -- and maybe we did this on the record at  
10 the end of the day, I'm sorry if I am not accurately  
11 recalling but there was Government Exhibits J and J-1  
12 which were the recordings and there was V and Y. I think  
13 the government did want to move them in. I don't know  
14 whether we did that formally on the record or whether the  
15 parties on the defense side of the table had any  
16 objections to those exhibits coming in.

17 MR. MARGULIS-OHNUMA: No objection, your Honor.

18 THE COURT: Okay.

19 MR. HUESTON: No objection, your Honor.

20 MR. LEGON: No objection, your Honor.

21 THE COURT: Thank you, just to make sure.

22 We'll then receive J, J-1, V and Y of the government's  
23 exhibits.

24 All right, now we have a gentleman waiting on  
25 the witness stand here. His name, Mr. Sinclair, is what?

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1 MR. SINCLAIR: The government calls Michael  
2 Oliver.

3 THE COURT: Okay, thank you, sir.

4 M I C H A E L O L I V E R ,

5 called as a witness, having been first duly sworn,  
6 was examined and testified as follows:

7 THE COURT: Thank you. Have a seat. Please  
8 speak into the microphone and state and spell your full  
9 name, please.

10 THE WITNESS: My name is Michael Oliver, M-i-c-  
11 h-a-e-l O-l-i-v-e-r.

12 THE COURT: Thank you. Could you please  
13 proceed?

14 DIRECT EXAMINATION

15 BY MR. SINCLAIR:

16 Q. Good morning, Mr. Oliver. What do you do for a  
17 living?

18 A. I'm an African art dealer and appraiser and advisor.

19 Q. And what is your educational background, Mr. Oliver?

20 A. I have a bachelor's degree in fine art and philosophy  
21 from the University of Wisconsin and I have a masters  
22 degree in urban design, also from the University of  
23 Wisconsin.

24 Q. Where do you currently work?

25 A. I work from -- I work in Manhattan.

Mr. Oliver - Direct - Mr. Sinclair

1 Q. And what do you do on a day-to-day basis as it  
2 relates to the dealing and appraising of African art as  
3 you've described?

4 A. I buy and sell African art and I appraise as well as  
5 advise a number of collectors on acquisitions and de-  
6 acquisitions from their collection.

7 Q. Have you ever been associated with a gallery?

8 A. Yes, I had a gallery on 72nd and Madison in Manhattan  
9 from 1976 to 1988.

10 Q. And you mentioned that you buy and sell African art.  
11 What type of African art do you buy and sell?

12 A. I buy and sell antique African art, art that's been  
13 ritually used.

14 Q. You use the term "ethnographic". Can you tell the  
15 Court what you mean by that term?

16 A. Well ethnographic is kind of a catch word. It means  
17 anything having to do with any of the artists, people who  
18 live in -- well in this case in Africa because I deal  
19 with African art but years ago it was called primitive  
20 art. But we don't use that expression anymore.

21 Q. And you also mentioned that you seek to buy pieces  
22 that have been used ritualistically.

23 A. That's correct.

24 Q. Can you describe what you mean by that?

25

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1 A. There are two kinds of pieces actually, pieces that  
2 are used by the indigenous people for their own  
3 ritualistic use and pieces that are carved for sale or  
4 gifts. I'm not interested very much in pieces that are  
5 carved for sales or gifts in terms of doing business with  
6 them. I look only for things that have been used in the  
7 context -- in the proper context for the proper ritual.

8 Q. During the course of your work buying and selling, do  
9 you have to make a distinction between those pieces of  
10 artwork that have been used ritually and those  
11 that have been carved simply for sale as you described  
12 it.

13 A. Yes, I do.

14 Q. What type of materials are African art typically  
15 made of?

16 A. Most of the things that I deal with are made of wood  
17 but there's an occasional object of ivory and some metal  
18 objects.

19 Q. You mentioned that you conduct appraisals. Who do  
20 you do appraisals of African artwork for?

21 A. Well, I've done appraisals for a number of  
22 individuals and I've -- private people and I've done  
23 appraisals for the three major museums in New York City,  
24 the Metropolitan, the Brooklyn Museum and the Museum for  
25 African Art. And I've done appraisals for the Detroit

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1 Art Institute, the Chicago Art Institute, the Minneapolis  
2 Art Institute, the Buffalo Museum of Science and the  
3 Smithsonian Institute.

4 Q. Why typically do museums need to appraise the art  
5 that they are in a collection that they're considering  
6 buying?

7 A. Most museums are self-insured and as such, they need  
8 an independent appraiser usually in order to settle a  
9 claim, if indeed there is a claim, when they loan --  
10 especially when they loan objects to other museums  
11 usually for exhibit.

12 Q. Have you ever lectured in the area of African art?

13 A. I have.

14 Q. And have you traveled in Africa?

15 A. Many times; yes.

16 Q. And when you're there in Africa, do you purchase  
17 African art?

18 A. Well I traveled in Africa every two months for two  
19 months; two months on and two months off, between 1974  
20 and 1980. I haven't been there since 1980. And it was  
21 for the purpose of looking to see how objects are used,  
22 as well as buying.

23 Q. And in the course of your career, have you had any  
24 affiliation with the Internal Revenue Service, other than  
25 as a taxpayer?

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1 A. Yes, I was on the art evaluation panel for the IRS  
2 from 1988 until 1994. And I have been a consultant to  
3 the IRS since then.

4 Q. And what is it that you do with the IRS?

5 A. Well, I review the appraisals that are given to the  
6 IRS when either an estate is filing for taxes or  
7 donations are given to museums. At that time, they have  
8 to put in an appraisal of the value of the objects and  
9 it's then reviewed by the IRS and I am the -- well when I  
10 was on the panel, I actually did the primary review and  
11 now I do reviews of anything that they need help with.

12 Q. And what -- are you familiar with the term "fair  
13 market value?"

14 A. Yes.

15 Q. And are you familiar with the term "fair market value  
16 as it relates to African art?"

17 A. Yes.

18 Q. And tell us what you -- how you use that term, what  
19 that term means to you.

20 A. Fair market value is price paid by a willing and  
21 informed buyer to a seller who is willing and informed  
22 and not under undue pressure.

23 Q. Okay. Have you ever testified previously as an  
24 expert about African art?

25 A. I have.

Mr. Oliver - Voir Dire - Mr. Margulis-Ohnuma

1 Q. Can you tell the Court about your experience  
2 testifying as an expert in the area of African art?

3 A. Yeah, I've testified in the -- in Dayton, Ohio in I  
4 think it's called the northern district federal court.  
5 And I've testified in this US court in Brooklyn.

6 Q. Was that in a proceeding before Judge Johnson?

7 A. Yes, it was.

8 Q. This past summer?

9 A. Yes, it was.

10 Q. And at that time were you qualified as an expert to  
11 testify about the values of African art?

12 A. Yes, I was.

13 MR. SINCLAIR: Your Honor, at this time we  
14 would offer Mr. Oliver as an expert in the area of  
15 African art and valuation and appraisals.

16 MR. MARGULIS-OHNUMA: Voir dire, your Honor?

17 THE COURT: All right, briefly.

18 VOIR DIRE EXAMINATION

19 BY MR. MARGULIS-OHNUMA:

20 Q. Are -- Mr. Oliver, do you have any certifications by  
21 any of the appraisal organizations?

22 A. No.

23 Q. Do you have any special training in appraisal itself?

24 A. Well I don't think that there is any special training  
25 for African art specifically. But I have been trained by

Mr. Oliver - Voir Dire - Mr. Margulis-Ohnuma

1 the IRS, as well as by twenty-five years of doing this.

2 Q. Are you member of the Antique Tribal Art Dealers

3 Association?

4 A. No, I am not.

5 Q. You're familiar with that association though;

6 correct?

7 A. No, I am not.

8 Q. Are you a member of the American Society of

9 Appraisers?

10 A. No.

11 Q. Are you a member of the Appraisers Association of

12 America?

13 A. No.

14 Q. Are you a member of the International Society of

15 Appraisers?

16 A. No.

17 Q. Have you received -- you said that there's no

18 training in African art. Have you received any training

19 in the appraisal of fine or decorative arts in general?

20 A. No.

21 Q. And would you agree with me there are many courses

22 available in that field; isn't that right?

23 A. Yes.

24 MR. MARGULIS-OHNUMA: I have nothing further,

25 your Honor. We -- I would object to the motion to

1           Mr. Oliver - Voir Dire - Mr. Margulis-Ohnuma  
2 qualify this witness as an expert appraiser.

3           THE COURT: All right. Is there anyone else on  
4 the defense side of the table who --

5           MR. HUESTON: I'm just going to join the  
6 application, your Honor.

7           THE COURT: I'm sorry?

8           MR. HUESTON: I'm going to join -- this is  
9 Michael Hueston. I am joining the application of Mr.  
Margulis-Ohnuma.

10          THE COURT: The objection?

11          MR. HUESTON: Yes, exactly.

12          THE COURT: All right.

13          MR. LEGON: And Steven Legon on behalf of  
14 Drissa Diane, I would join the application as well,  
15 your Honor.

16          THE COURT: All right. Let me just ask you,  
17 sir, about your twenty-five years of experience in  
18 appraising African art, if you could tell me about that.  
19 I understand there have been no specific educational  
20 courses but if you could tell me about your twenty-five  
21 years that you just testified to.

22          THE WITNESS: Well, I started when I was named  
23 to the Art Evaluation Panel at the IRS. The person who  
24 had been there before explained to me what had to be  
25 done, the nature of the appraisals and we reviewed twice

Mr. Oliver - Voir Dire - Mr. Margulies-Ohnuma

1 a year somewhere between 500 and 1,500 objects that were  
2 donated to museums or were in estates.

3 THE COURT: About 500 to 1,500 pieces of  
4 African art specifically?

5 THE WITNESS: Oh, just of African art; yeah.

6 THE COURT: And was this West African or --

7 THE WITNESS: All from --

8 THE COURT: -- all over?

9 THE WITNESS: All over in Africa. I served  
10 with -- they had someone from the private sector and  
11 someone from the public sector. The private sector  
12 person being a professor and we would meet in Washington  
13 twice a year with the IRS panel. And with various people  
14 who have had inspected the individual objects and would  
15 go over the abstracts of the appraisals, as well as  
16 photographs. And if, in fact, we needed more  
17 information, we could then ask the people who had  
18 examined them and if, in fact, there wasn't still enough  
19 information, we would go and see the actual objects.

20 THE COURT: Would you independently ascertain  
21 the materials used in the art? For example with ivory --

22 THE WITNESS: Uh-huh.

23 THE COURT: I heard testimony earlier about  
24 attempts to disguise the appearance of the ivory, would  
25 you rely on someone else to ascertain whether or not that

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1 object was ivory and the age of the ivory? Because we've  
2 heard testimony that the age of the ivory sometimes being  
3 an issue. Or would you independently verify the content  
4 of that object?

5 THE WITNESS: Well there were two things that  
6 happened. The first would be the person who had done the  
7 examination would describe exactly what he or she saw.  
8 The weight of the piece, what the surface looked like, if  
9 there was any exfoliation, if there was any -- if they  
10 knew the difference between the ivory and bone, for  
11 example, the porosity of the material.

12 And then if we -- if there was still a doubt,  
13 we would go and examine the actual object and determine  
14 for ourselves. There are a number of ways that one can  
15 tell, maybe not as sophisticated as the government uses  
16 but both from handling the piece and by examining it in  
17 terms of its hardness or its surface characteristics,  
18 generally one can tell if it's plastic or its ivory or  
19 some composite.

20 THE COURT: So your expertise in appraising an  
21 object would be based upon some other independent  
22 determination that this was an object that was bone or  
23 ivory or wood; correct?

24 THE WITNESS: That's correct.

25 THE COURT: And your appraisal would be based

Mr. Oliver - - Direct - Mr. Sinclair  
1 on that --

2 THE WITNESS: That's correct.

3 THE COURT: -- predetermined information.

4 THE WITNESS: Yes.

5 THE COURT: All right. I'm going to overrule  
6 the objection. I think this witness has adequately  
7 established that he's had twenty-five years examining  
8 multiple hundreds of objects of African art, including  
9 some of which were ivory.

10 THE WITNESS: Oh, yes.

11 THE COURT: So I am going to overrule the  
12 objection and I've determined that he is qualified to  
13 testify in this area of appraising African art.

14 MR. SINCLAIR: Thank you, your Honor.

15 DIRECT EXAMINATION

16 BY MR. SINCLAIR:

17 Q. I would like to return to the term that we were  
18 using, fair market value. Tell us again what you  
19 understand the term fair market value to mean in this  
20 area.

21 A. Well as I said before, I think it's fair market value  
22 is the value -- is the price that a willing and an  
23 informed buyer would pay for an object to a seller who  
24 was not under duress.

25 Q. And how do you go about determining that?

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1 A. Well usually it's done by people stating that but in  
2 most instances, I'm not really called upon to at the time  
3 of the transaction, it's really after that I'm asked to  
4 do an independent view as to what the object per se is  
5 worth.

6 Q. You've mentioned at least two different markets for  
7 ivory -- African ivory in the United States. You've  
8 mentioned the sort of ritualistic use, high art ivory if  
9 you will and then you've mentioned ivory for sale or  
10 decoration. Is that true?

11 A. That's right.

12 MR. MARGULIS-OHNUMA: Objection to the form of  
13 the question.

14 THE COURT: Can you refrain (sic),  
15 Mr. Sinclair, please.

16 Q. Are there multiple types of markets for ivory within  
17 the United States?

18 A. Yes, I think there's a market for -- there's an art  
19 market that you might see at Sotheby's or at -- or in the  
20 major galleries of objects that are known. Usually they  
21 have a provenance. They can be dated back to a -- being  
22 collected at a certain period of time. Generally,  
23 they've been vetted in terms of having many people look  
24 at them, experts in both specific areas, as well as in  
25 African art in general and then there's a secondary

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1 market which is a market mainly for people who want to  
2 decorate their office or their homes with the things that  
3 kind of look like African art but don't have the --  
4 neither the value nor the use in terms of age of the kind  
5 of piece that would come in the, if you will, high art  
6 market.

7 Q. And in the course -- have you had the occasion to  
8 appraise some ivory along with Agent Alagrante and other  
9 members of the Fish and Wildlife Service in connection  
10 with this ongoing investigation that led up to this case?

11 A. Yes, I have.

12 Q. And of the ivory that you've seen in the course of  
13 those requests to do appraisals, which market does the  
14 ivory that you've been shown fall into?

15 A. Well almost all of the ivory that I've been shown and  
16 certainly all of the figured objects fall into the  
17 decorative category and there were one or two bracelets,  
18 I think, that were little abstract bracelets with  
19 geometric designs on them in the very first group of  
20 objects that I looked at which look like they had been  
21 used, worn. Although bracelets are not really ritually  
22 worn. You could see by the wear on them that they had  
23 been actually used. But the figured things were all made  
24 for sale objects.

25 Q. And in the course of doing your appraisals for the

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1 government, were there any impediments to your ability to  
2 assess the ivory at all?

3 A. Well the only -- the only problem is that some of the  
4 objects are covered over, so it's hard to see the color  
5 of the ivory itself and the finesse of the carving. And  
6 I think that that even in terms of decorative art makes  
7 it that a difference as to the value of the individual  
8 object.

9 Q. And have you been asked to do appraisal by looking at  
10 photographs?

11 A. Yes, I have.

12 Q. And does that impede in any way your ability to do  
13 complete appraisals?

14 A. Well yes and some photographs if there's no scale,  
15 it's hard to tell how big the pieces are. Again, when it  
16 comes to these kinds of objects, size makes a difference.  
17 I shouldn't say that but -- and some of the objects in  
18 the photographs were also covered with whatever they're  
19 covered with. So I couldn't -- again, I couldn't see the  
20 quality of the carving or the color of the ivory.

21 Q. Okay. So I think you just touched on an answer to my  
22 next question which is what factors then are -- do you  
23 consider as you look at this decorative African ivory art  
24 to assess what the fair market value would be?

25 A. Okay. In the art market, there's a term that's

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1 called carry and it means how does the object took from a  
2 distance? How does it -- does it project an image of  
3 harmony or of beauty, subjective terms I realize but --  
4 and also, of course, the -- as I said before, the color,  
5 the patina of the ivory and the finesse of the carving.

6 Q. You just used the term patina. Can you tell us what  
7 you mean by that term?

8 A. Patina is the color of the ivory. Usually ivory  
9 tends to be more light in color but sometimes either  
10 through handling or through applications of various  
11 pigments like tea for example, ivory can be made darker  
12 and more sensual looking.

13 Q. I would like to show you the two statutes that the  
14 Court has already received testimony or part of a March  
15 2006 shipment into the United States. Both of these  
16 statutes bear seizure tag 818148. And I would ask  
17 Mr. Oliver, for you to -- I'm showing you one that's been  
18 marked as item 18 which I hold here before you, 18. And  
19 the second one is marked as item number 13, also before  
20 you and I would ask that you tell us sort of what factors  
21 you consider in assessing the value of these two pieces  
22 of ivory. And how one might be more valuable or less  
23 valuable and assess that.

24 A. Okay. Should I refer to them by the number?

25 Q. Yes, please.

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1 A. Okay.

2 MR. MARGULIS-OHNUMA: I apologize for  
3 interrupting. Are these referenced in the report that  
4 was provided? Just to make sure that we're looking at  
5 the same thing.

6 MR. SINCLAIR: Yes, they are --

7 MR. MARGULIS-OHNUMA: So it's number 13, bates  
8 stamped 5177, item number 13 and bates stamp 5178, item  
9 number 18; is that correct, counsel?

10 MR. SINCLAIR: These are --

11 THE WITNESS: No, these are --

12 MR. SINCLAIR: No, these are not. These are  
13 3500-MO-5, part of the March 2006 shipment.

14 THE COURT: March '06 shipment?

15 MR. SINCLAIR: March '06 shipment.

16 THE COURT: Okay.

17 MR. MARGULIS-OHNUMA: 3500 -- okay.

18 THE COURT: Mr. Ohnuma, could you just push the  
19 stalk of the mic away? Yes. Thank you. It's very  
20 sensitive that sponge, so okay.

21 THE WITNESS: Do you need the number?

22 THE COURT: Would you like the witness to give  
23 you the number Mr. Ohnuma?

24 MR. MARGULIS-OHNUMA: Yeah, it's --

25 THE WITNESS: It's 818 --

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1 MR. MARGULIS-OHNUMA: Oh, no, no, no. I don't  
2 need that. It's -- so it's 3500-MO-5, which is a two-  
3 paged handwritten document; is that right, sir?

4 MR. SINCLAIR: That's right.

5 MR. MARGULIS-OHNUMA: Okay.

6 Q. Would it help you to refer to your notes?

7 A. So it's 18 and 13.

8 Q. And so can you describe what things you consider in  
9 assessing the value of these two pieces of ivory?

10 A. Okay. Well, obviously 18 -- let's start with 18.  
11 It's covered, so it's very hard for me to tell the color  
12 of the ivory but the first thing that I can see is the  
13 arms have been attached. In ritualistic sculpture that's  
14 used tribally, pieces are monoxylous. That means carved  
15 in one piece wood, so that when you see these cracks in  
16 here, it indicates that the arms have been attached which  
17 would immediately make it a tourist piece, a piece made  
18 for sale.

19 The same is true with number 13. Again, there are  
20 two lines on the shoulders from the separate piece being  
21 attached. I suspect that the feet are also attached on  
22 number 13 because of the way the covering, whatever that  
23 is, has kind of clumped down at the bottom. It looks  
24 like it's -- there's too much of it in the undercut for  
25 it just to be an even application on a single piece of

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1 ivory. Assuming these pieces are both made of ivory, I  
2 can obviously see number 13 made of ivory, neither of  
3 these tribal groups, number 18 being Baule from the Ivory  
4 Coast and number 13 being Benin from Nigeria. They don't  
5 carve these type of objects out of ivory. They always  
6 carved the Baule one, number 18, would be carved of one.  
7 And number 13 would be bronze. The --

8 Q. I just want to stop you there and clarify. You just  
9 identified -- you just used the term Benin and Baule. Can  
10 you tell us what you mean by those terms and also spell  
11 those terms please.

12 A. Okay. Baule, B-a-u-l-e, I believe they're the  
13 largest ethnic group in the Ivory Coast. And they're  
14 Akan, A-k-a-n, people. That's the origin. And they  
15 inhabit the eastern end -- I'm sorry, the western end --  
16 sorry, eastern -- eastern and southern and central  
17 regions of Ivory Coast.

18 Benin, it was a kingdom that existed in the -- prior  
19 to the twentieth century which was invaded and more or  
20 less destroyed in 1897 by the British punitive  
21 expedition. They're in Nigeria and in the area that's  
22 now called Benin. And there are still Benin who are  
23 there but -- and some of the court material has been  
24 returned. In 1897 the British sacked the capital of  
25 Benin, most of the objects that were taken hundreds and

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1 hundreds of them, ended up in the British museum or --

2 Q. If I can interrupt for a moment.

3 A. Yup.

4 Q. What --

5 A. Too much information?

6 Q. It's interesting but I did want to tie it back to  
7 these two pieces of ivory that we're looking at.

8 A. Okay.

9 Q. And what I think I heard you say and please correct  
10 me if I'm wrong, is that the piece marked as 18 which  
11 you've identified as a Baule piece ordinarily would not  
12 be presented in ivory but would be presented in some sort  
13 of wooden sculpture.

14 A. That's correct. They don't carve --

15 Q. And so for purposes of the appraisal that you've  
16 done, that immediately takes it out of the area of what  
17 we call high art; right?

18 A. Okay.

19 Q. And puts it in this decorative art market because  
20 this wouldn't be ivory in the actual ritualistic use.

21 MR. MARGULIS-OHNUMA: Your Honor, you know, I'm  
22 going to object to --

23 THE COURT: The form of the question.

24 MR. MARGULIS-OHNUMA: I'm going to let it go to  
25 the leading -- yes. Let's have the witness testify,

1                   Mr. Oliver - - Direct - Mr. Sinclair  
2 please.

3                   THE COURT: All right. Would you extract that  
4 information from the witness please.

5 Q. What is the fact that the statute that's marked as 18  
6 made of ivory tell you about whether or not it's high art  
7 or decorative art?

8                   MR. MARGULIS-OHNUMA: Objection to the form.  
9 Could we just define high art?

10 Q. There's --

11                  THE COURT: He did. He did define it, as I  
12 recall.

13                  MR. MARGULIS-OHNUMA: Okay.

14                  THE COURT: I mean, I think I have the  
15 understanding of what he's talking about.

16 A. Yes, I'm using -- in terms of ritual use, the Baule  
17 people only carve very small objects out of ivory. They  
18 carve cones, small little cones, an occasional hairpin,  
19 and they do not carve these figures, these large figures  
out of ivory ever.

20 Q. And then with respect to number 13, the Benin statute  
21 you've identified, what's the significance that it's in  
22 ivory and not bronze?

23 A. There were -- you can see by the way the hands were  
24 in this piece -- well aside from the fact that it's  
25 pieced together, you can see from the hands it held

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1 something. The large pieces that have things in the  
2 hands were cast of bronze, although -- and not of ivory.  
3 The Benin carve very -- only very simple figures out of  
4 ivory, some of them being probably half to maybe two-  
5 thirds of the size at the most, I would say half of this  
6 figure but not with anything in their hands, not with  
7 anything -- not with arms extended, arms that are always  
8 at the side. And this is -- the ones that are in the  
9 British museum and in Berlin, which is where the other  
10 group went from 1897, all display exactly the same  
11 characteristics. There are none that display these  
12 characteristics.

13 These characteristics are found in bronze  
14 figures and figures that are on the plaques, Benin  
15 plaques which were used to decorate the walls and told  
16 historical, either parables or actual history, and did  
17 have, in fact, warriors and figures holding other things.  
18 They were always carved in bronze in hieroglyph.

19 Q. Mr. Oliver, in the course of your work at the IRS in  
20 setting fair market value for ivory that had been donated  
21 to various museums and whatnot, did you come across this  
22 type of art that is decorative art, as you've described  
23 it?

24 A. Yes, we did.

25 Q. And were you able to set market values for those

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1 pieces?

2 A. Yeah, we used a category which we called designer  
3 objects and those are objects that one would find in  
4 interior decorators exhibits or people who -- small  
5 galleries who sold to people who wanted to kind of  
6 decorate their houses and their offices and didn't really  
7 care about the fact of the piece being an authentic  
8 object.

9 Q. And so for the value of the statute that's before  
10 you, number 18, what market value had you set for that?

11 A. Number 18, it's a very -- I put a value on it based  
12 on the fact that it's an attractive carving. As a -- it  
13 has a maternity; maternities are always sought after  
14 because there's something endearing about them. And I  
15 put a value of \$8,000 or \$7,500 on it, I believe --  
16 \$7,500.

17 Q. And the piece marked as 13, the warrior statute from  
18 the Benin tribe ostensibly, what market value would you  
19 put at least on that?

20 A. Well here I can see the color of the ivory. It does,  
21 however, have a large crack down the front on the --  
22 running from the neck all of the way down to the waist.  
23 And I put a range on 13 from 6 to \$8,000. Again, that's  
24 based on the size and the kind of the carry -- it has a  
25 very nice face. That is an easily comprehensible hairdo.

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1 It's a -- it's just a -- it's an attractive object from  
2 the point of view of decoration.

3 MR. SINCLAIR: I would ask, your Honor, if you  
4 do have no objection to actually holding it, because I  
5 think that the -- I would ask you to hold the actual  
6 exhibit for purposes of assessing it.

7 THE COURT: All right.

8 MR. SINCLAIR: And I'm going to ask you, Mr.  
9 Oliver, if the weight of the various objects mean  
10 anything.

11 A. Yes, of course, ivory is much heavier than wood and  
12 not as heavy as metal.

13 THE COURT: All right. I will just note for  
14 the record, I did hold the object that was marked as  
15 number 18. And it was quite heavy.

16 Q. Now I am going to ask you, Mr. Oliver, you have  
17 before you your notes, MO -- marked as 3500-MO-5. Did  
18 you -- have you had the opportunity to review -- and if  
19 you need to come down and look at it, you can, but did  
20 you have the opportunity recently to review the ivory  
21 that was contained in the March 2006 shipment which is  
22 now on this cart that -- at the United States Attorney's  
23 Office?

24 A. I did.

25 Q. Okay. And at the time that you inspected it, were

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1 you able to pick up the pieces?

2 A. Yes, I was.

3 Q. And were you able to inspect them outside of the  
4 plastic covering that's now on them?

5 A. Yes, I was.

6 Q. And were you able to -- did you have as much time as  
7 you needed to conduct an analysis of it in terms of what  
8 their value might be?

9 A. Yes, I did.

10 Q. And did you prepare notes on the value of the pieces  
11 that were contained in that March 2006 shipment?

12 A. Yes, I did.

13 Q. Okay. And were you able to pinpoint an exact price  
14 for all of the pieces?

15 A. Well it's hard to pinpoint -- and no, the answer is  
16 no.

17 Q. Okay. And at times did you have to use a range?

18 A. I did have to use a range; yes.

19 Q. Why is that?

20 A. The pieces that are covered, it's -- it's really  
21 impossible to tell how attractive they actually are  
22 because you can't tell again, the color of the carving or  
23 if there's surface decoration and the kind of things that  
24 would bring the price up even as a decorator object.

25 Q. And so based on your review of the pieces contained

Mr. Oliver - - Direct - Mr. Sinclair  
1 in the March 2006 shipment, did you set a range of prices  
2 for that shipment?

3 A. Yes, I did.

4 Q. And what was the total range that you were able to  
5 determine?

6 A. It ranged from \$76,500 on the low end to \$96,500 on  
7 the high end.

8 Q. And is that range reflected in your notes marked as  
9 3500-MO-5?

10 A. Yes, it is.

11 MR. SINCLAIR: Your Honor, at this time we  
12 would offer 3500-MO-5 into evidence.

13 MR. MARGULIS-OHNUMA: Objection, your Honor.

14 MR. HUESTON: Objection, your Honor.

15 THE COURT: Was -- these were notes that were  
16 prepared contemporaneously with your inspection?

17 THE WITNESS: That's correct, your Honor.

18 THE COURT: Is your objection based on hearsay?

19 MR. MARGULIS-OHNUMA: No.

20 THE COURT: Or --

21 MR. MARGULIS-OHNUMA: My objection is based on  
22 reliability, your Honor. This is so far short of a real  
23 appraisal it's mind-boggling. I mean, these are random,  
24 rather indecipherable notes that have no evidentiary  
25 value at all except perhaps for impeachment. This is not

1                   Mr. Oliver - - Direct - Mr. Sinclair  
2       an appraisal, your Honor. This is -- these are random  
3       notes. He can -- I mean he can keep stalking as much as  
4       he likes about the value of the objects but I don't think  
5       these notes should come into evidence.

6                   MR. SINCLAIR: Your Honor, we could go through  
7       piece by piece and have the defendant -- and have the  
8       witness explain how he reached of these or we can have  
9       the Court rely upon his notes as a summary of, you know,  
10      what his review was. He's testified that he was able to  
11      review these documents -- these pieces of ivory, that he  
12      considered them based on all of the factors that he's  
13      just described. And he set down market values for them  
14      here.

15                  Now whether or not Mr. Margulis-Ohnuma or the  
16       other defense counsel want to cross-examine him on the  
17       basis of that, they're able to do that but this will  
18       assist the Court in capturing Mr. Oliver's assessment of  
19       the value of each of these pieces without having for us  
20       to sit here and show him each piece and him describe, you  
21       know, what factors go into his consideration.

22                  THE COURT: Well I would like some explanation  
23       about the notes themselves. There are numbers that run  
24       down the left side of the column. Are those -- do those  
25       correspond --

26                  MR. SINCLAIR: Yes.

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1           THE COURT: I mean I would like to have some  
2 explanation --

3           MR. SINCLAIR: Let's --

4           THE COURT: -- about what this is.

5           MR. SINCLAIR: Let me lead him through this.

6 Q. I'm showing you --

7           THE COURT: For example -- can I just -- number  
8 18 says Bale maternity and that I'm understanding is what  
9 we saw here today in court; is that correct?

10          MR. SINCLAIR: Yes, your Honor.

11          THE COURT: Mr. Oliver?

12          MR. SINCLAIR: Yes, that's correct. And I said  
13 bird on baby's head because of the little figure on the  
14 back, the baby has a little --

15          THE COURT: Ah.

16          MR. SINCLAIR: -- probably a chicken on the top  
17 of the head.

18          THE COURT: All right. Why don't you have some  
19 explanation about them then.

20          MR. SINCLAIR: Sure.

21 Q. So if you can explain -- I'm going to show you again  
22 what's been marked as -- well I'll show you a different  
23 one. This is also in that same -- that bears that same  
24 seizure tag. This is seizure tag 818148, item number 3  
25 and I'm showing that to you.

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1       And with respect to the item numbers of the items  
2 that you reviewed, can you set them forth on the lefthand  
3 column of your notes?

4 A. Yes, the item number is on the lefthand side.

5 Q. And then just to the right of the item number, what  
6 is reflected in your notes for each item number that you  
7 reviewed?

8 A. The estimate that I would put on the value -- the  
9 value of the object on the open market.

10 Q. Okay. Just you've gone all of the way to the far  
11 right of the page. I was just going to move one column  
12 over from the item number -- the writing there for  
13 instance --

14 A. Oh, well no I am sorry. That's what the piece -- the  
15 carving style that it's done in. For example, item 3,  
16 the shape of the piece is more or less like a Eurabo  
17 (ph.) which is a ethnic group in Nigeria shape but the  
18 figures themselves are kind of -- there's an expression  
19 in French, I hate to do this, I know this is not -- it's  
20 called "Opmiesta fantasize" (sic). It means invented  
21 piece. It's a fantastic object. It has no real style.  
22 It's a kind of agglutination of a number of different  
23 styles.

24       The scars on the -- next to the mouth of the lower  
25 figure, for example, are Eurabo. The next figure up also

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1 could be Eurabo from a kind of face that -- a kind of  
2 head that you see at the bottom of a mask that's called a  
3 "hippa" (ph.) mask which is a large mask that's worn in a  
4 masquerade. I can't see on the top figure, there's no  
5 head. But it's -- these things don't really go together  
6 to make any kind of identifiable object that was ever  
7 used ritually by the Eurabo people. On the other hand, I  
8 suspect when it's cleaned up, it will have a certain  
9 value as a piece of sculpture.

10 Q. So, the fact that it doesn't really exist in any  
11 tribe, does that detract even from its decorative value?

12 A. Well --

13 (Conclusion of recorded audio 9:34:57)

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## I N D E X

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## C E R T I F I C A T E

I, ROSALIE LOMBARDI, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this  
19th day of October, 2010.

  
Rosalie Lombardi  
Transcription Plus II